

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :

THOMAS D. STARKEY, M.D., :
RESPONDENT. :

FINAL DECISION AND ORDER
LS 0704241MED

Division of Enforcement Case # 06MED212

The parties to this action for the purposes of Wis. Stat. § 227.53 are:

Thomas D. Starkey, M.D.
32 East St. John
P.O. Box 973
Christiansted, Virgin Islands 00821

Division of Enforcement
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

Wisconsin Medical Examining Board
Department of Regulation & Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

A disciplinary proceeding was commenced in this matter by the filing of a Notice of Hearing and Complaint with the Wisconsin Medical Examining Board on April 24, 2007. Prior to the hearing on the Complaint, the parties in this matter agreed to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Thomas D. Starkey, M.D., Respondent herein, 32 Estate St. John, P.O. Box 973, Christiansted, Virgin Islands 00821, was born on December 2, 1954 and is licensed to practice medicine and surgery in the state of Wisconsin, license #42740, said license having been granted on October 6, 2000. Respondent permitted his registration to practice medicine and surgery in the state of Wisconsin to expire on October 31, 2003 and he has not elected to renew his registration thereafter. Pursuant to Wis. Stat. § 440.08(3), Respondent retains the right to renew his registration for a period of 5 years from October 31, 2003 upon payment of the renewal fee and a late fee and upon demonstration of compliance with his continuing medical education requirements, Wis. Stat. § 448.13, and without demonstrating compliance with any other requirements necessary to the public health, safety and welfare.

2. At all times relevant to this action, Respondent was working as a physician and surgeon at the University of

3. Respondent specializes in the practice of cardiovascular surgery.
4. On October 9, 2002, S.S., the patient herein, was under the care of Respondent. S.S. died on October 9, 2002.
5. On July 2, 2003, T.H., as surviving spouse of S.S. (deceased) and as Special Administrator of the Estate of S.S. commenced a medical malpractice negligence action against Respondent by the filing of a Complaint in the State of Wisconsin, Dane County Circuit Court, Branch 1.
6. On March 15, 2006, a Special Verdict was entered finding, by stipulation of the parties, that Respondent was negligent by reason of the inadvertent removal of the inflow cannula during the medical procedure being performed on S.S.; and that Respondent's negligence was a cause of the death of S.S.
7. On May 22, 2006, the Honorable Robert A. DeChambeau, Judge, Dane County Circuit Court, Branch 1, entered an Order For Entry Of Judgment finding that the Respondent was negligent, that Respondent's negligence was a cause of the death of S.S. and that the damages sustained thereby were \$250,000.
8. On May 22, 2006, the Honorable Robert A. DeChambeau, Judge, Dane County Circuit Court, Branch 1, entered a Judgment with regard to the claims of T.H., for herself individually and as Special Administrator of the Estate of S.S., in the amount of \$250,000 plus recoverable interests, costs and disbursements in the amount of \$35,866.63 for a total judgment of \$285,866.63.
9. Respondent has tendered the voluntary surrender of his license to practice medicine and surgery in the state of Wisconsin in final resolution of the pending disciplinary proceedings.

CONCLUSIONS OF LAW

1. The Wisconsin Medical Examining Board has jurisdiction to act in this matter, pursuant to Wis. Stat. § 448.02(3), and is authorized to enter into the attached Stipulation and Order, pursuant to Wis. Stat. § 227.44(5).
2. The finding by the court of negligence, as described in the Findings of Fact, above, is conclusive evidence under Wis. Stat. § 448.02(3)(b) of negligence in treatment and constitutes a violation of Wis. Stat. § 448.02(3).
3. The Wisconsin Medical Examining Board has the authority pursuant to Wis. Stat. § 440.22 to assess the costs of this proceeding against Thomas D. Starkey, M.D.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The voluntary surrender of the license of Thomas D. Starkey, M.D. to practice medicine and surgery in the state of Wisconsin is hereby accepted.

IT IS FURTHER ORDERED that:

2. Thomas D. Starkey, M.D. shall not make application for a license to practice medicine and surgery in the state of Wisconsin at any time prior to November 1, 2008.
3. Thomas D. Starkey, M.D. may make application for a license to practice medicine and surgery in the state of Wisconsin on or after November 1, 2008 but said application shall not be granted by the Wisconsin Medical Examining Board until Thomas D. Starkey, M.D. has demonstrated to the satisfaction of the Wisconsin Medical Examining Board his competence to practice medicine and surgery and compliance with all of the provisions of this Final Decision and Order.
4. If Thomas D. Starkey, M.D. elects to make application for a license to practice medicine and surgery in the state of Wisconsin on or after November 1, 2008, he shall also comply with all of the then existing requirements for a license

to practice medicine and surgery in the state of Wisconsin as provided for in the Wisconsin Statutes and the Wisconsin Administrative Code.

5. Thomas D. Starkey, M.D. shall not practice or attempt to practice medicine and surgery in the state of Wisconsin when not licensed and currently registered to practice medicine and surgery in the state of Wisconsin.

IT IS FURTHER ORDERED that:

6. Respondent shall, within ninety (90) days from the date of this Order, pay costs of this proceeding in the amount of \$ 3,177.59. Payment shall be made payable to the Wisconsin Department of Regulation and Licensing, and mailed to:

Department Monitor
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935
Telephone (608) 267-3817
Fax (608) 266-2264

7. This Order is effective on the date of its signing.

Wisconsin Medical Examining Board

By: Gene Musser MD
A Member of the Board

9/19/07
Date

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	STIPULATION
THOMAS D. STARKEY, M.D.,	:	LS 0704241MED
RESPONDENT.	:	

Division of Enforcement Case # 06MED212

It is hereby stipulated between Thomas D. Starkey, M.D., and by his attorney, David McFarlane; and Gilbert C. Lubcke, for the Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of a pending formal disciplinary proceeding involving Respondent's licensure before the Wisconsin Medical Examining Board. Respondent consents to the resolution of this formal disciplinary proceeding by stipulation.
2. Respondent understands that by signing this Stipulation he voluntarily and knowingly waives his rights, including: the right to a hearing on the allegations against him, at which time the state has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to testify himself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and any other provisions of state or federal law.
3. Respondent has obtained advice of legal counsel prior to signing this Stipulation.
4. Respondent agrees to the adoption of the attached Final Decision and Order by the Wisconsin Medical Examining Board. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.
5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by consideration of this attempted resolution.
6. The parties to this Stipulation agree that the attorney or other agent for the Division of Enforcement and any member of the Wisconsin Medical Examining Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of the Respondent or his attorney, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with the Board's deliberations on the Stipulation. Additionally, any such Board advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.
7. Respondent is informed that should the Board adopt this Stipulation, the Board's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.
8. The Division of Enforcement joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

Thomas D. Starkey, M.D.
32 Estate St. John
P.O. Box 973
Christiansted, Virgin Islands 00821

Date

David McFarlane
Bell, Gierhart & Moore, S.C.
Attorney for Thomas D. Starkey, M.D.
44 West Mifflin St., #1000
P.O. Box 1807
Madison, WI 53701-1807

Date

Gilbert C. Lubcke, Attorney
Division of Enforcement
Wisconsin Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935

Date

Case: 06MED212
Costs: \$3,177.59
Forfeiture: \$0.00